

Order

Michigan Supreme Court
Lansing, Michigan

February 3, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2016-06

Stephen J. Markman
Brian K. Zahra
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Justices

Proposed Amendments of
Rules 3.925, 8.119, and 8.302 and
New Rule 5.133 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rules 3.925, 8.119, and 8.302 and new Rule 5.133 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text
is shown by strikeover.]

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality;
Destruction of Court ~~Files~~Records; Setting Aside Adjudications

(A)-(C)[Unchanged.]

(D) Public Access to Case File Records; Confidential File.

- (1) General. Case file ~~Records~~ of the juvenile cases maintained under Chapter XIIA of the Probate Code, MCL 712A.1 et seq., other than confidential files, must be open to the general public.
- (2) Confidential Files. Confidential files are defined in MCR 3.903(A)(2) and include the social case file and those records in the legal case file made confidential by statute, court rule, or court order. Only persons who are found by the court to have a legitimate interest may be allowed access to

the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) ~~Retention and Destruction of Court Case Files and Other Court Records. This subrule governs the retention and destruction of court case files and other court records, as defined by MCR 8.119(D).~~

(1) ~~Destruction Generally; Effect. The court may~~shall ~~destroy its case files and other court records only as prescribed by this rule and the approved General Records Retention and Disposal Schedule #16 — Michigan Trial Courts~~records retention and disposal schedule established under MCR 8.119(K). ~~Destruction of a case record file does not negate, rescind, or set aside an adjudication.~~

(2) ~~Register of Actions, Indexes, and Orders. The register of actions in a case filed under the Juvenile Code and numerical and alphabetical indexes must be maintained permanently. In addition, the court must permanently maintain the order of adjudication, the order terminating parental rights, and the order terminating jurisdiction for each child protective case; the order of adjudication and the order terminating jurisdiction for each delinquency case; the latest dispositive order for each designated case; and the order appointing a guardian for each juvenile guardianship case.~~

(3) ~~Delinquency and Motor Vehicle Code Case Files.~~

(a) ~~Except as provided in subrule (2), the court may destroy the diversion case file of a juvenile after the juvenile becomes 17 years of age.~~

(b) ~~Except as provided in subrule (2), the court may destroy all case files of matters heard on the consent calendar after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained permanently as a nonpublic record.~~

(c) ~~Except as provided by subrules (2), (3)(a), and (3)(b), the court may destroy the legal records in the case files pertaining to a person's juvenile offenses when the person becomes 30 years of age. The~~

~~social records in the case files pertaining to a person's juvenile offenses may be destroyed three years after entry of the order terminating jurisdiction of that person or when the person becomes 18 years old, whichever is later. The social records are the confidential files defined in MCR 3.903(A)(3). The court must destroy the records in traffic and local ordinance case files opened by issuance of a citation pursuant to the motor vehicle code or a local corresponding ordinance when the person becomes 30 years of age.~~

- (d) ~~If the court destroys its case files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.~~
- (4) ~~Child Protective Case Files. Except as provided in subrule (2), the court may destroy the legal records in the child protective proceeding case files pertaining to a child, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends. The social records in the child protective proceeding case files pertaining to a child may be destroyed three years after entry of the order terminating jurisdiction of that child or when the child becomes 18 years of age, whichever is later. The social records are the confidential files defined in MCR 3.903(A)(3).~~
- (5) ~~Personal Protection Proceeding Case Files. The court may destroy the legal and social records in personal protection proceeding case files pertaining to a juvenile respondent three years after the expiration date of the personal protection order or the latest dispositive order on a violation of the personal protection order, or when the juvenile respondent becomes 18 years of age, whichever is later.~~
- (6) ~~Juvenile Guardianship Case Files. Except as provided in subrule (2), the court may destroy the records in juvenile guardianship case files 25 years after the order appointing a juvenile guardian.~~
- (7) ~~Probation Case Files. The court may destroy the records in probation case files pertaining to a juvenile three years after an order terminating jurisdiction or when the juvenile becomes 18 years of age, whichever is later.~~

(F)-(G)[Unchanged.]

Rule 5.133 Opening Wills Originally Filed for Safekeeping

If a will filed for safekeeping under MCL 700.2515 remains unopened 100 years after the date it was filed with a court, the death of the testator will be presumed and the will shall be opened by the probate register and maintained in accordance with MCR 8.302. Upon opening, the will shall be considered a will delivered after death of testator and shall be retained for the period prescribed in the record retention disposal schedule established under MCR 8.119.

Rule 8.119 Court Records and Reports; Duties of Clerks

- (A) [Unchanged.]
- (B) Records Standards. The clerk of the court shall comply with the records standards in this rule, MCR 1.109, and as ~~otherwise~~-prescribed by the Michigan Supreme Court.
- (C) Filing of Documents and Other Materials. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Documents and other materials filed with the court as defined in MCR 2.107(G) must comply with Michigan Court Rules and the Michigan Supreme Court records Trial Court Case File Management Standards. The clerk of the court may only reject documents that do not meet the following minimum filing requirements:
 - (1)-(5)[Unchanged.]
- (D) Records Kept by the Clerk of the Court. The clerk of the court shall ~~keep~~maintain the following case records in accordance with the Michigan-Supreme Trial Court Case File Management Standards, Michigan Trial Court Records Retention and Disposal Standards and Guidelines, standards and approved records retention and disposal schedules~~local court plans~~. Documents and other materials made confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated as confidential and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court pursuant to subrule (I) that makes a document or other materials in that case confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.
 - (1) ~~Indexes Case History and Case Files. Except for civil infractions, t~~The clerk shall ~~keep and~~ maintain records of each case consisting of case history~~a numerical index, an alphabetical index, a (known as a register of actions); and, except for civil infractions,~~ a case file in such form and style

as may be prescribed by the ~~Supreme Court~~State Court Administrative Office. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under ~~the Juvenile Code~~Chapter XIIA of the Probate Code, MCL 712A.1 et seq., as required under MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded in the court's automated case management system and ~~on the register of actions, case file, numerical index, and alphabetical index~~. The records shall include the following characteristics:

- (a) ~~Numerical Index. The clerk shall maintain a numerical index as a list of consecutive case numbers on which the date of filing and the names of the parties are recorded. The index may be maintained either as a central index for all cases filed in the court or as separate lists for particular types of cases or particular divisions of the court.~~
- (b) ~~Alphabetical Index. The clerk shall maintain a central alphabetical index or separate alphabetical indexes for particular types of cases or particular divisions of the court on which the date of filing, names of all parties, and the case number are recorded.~~
- (ea) Register of ActionsCase History. The clerk shall ~~keep~~create and maintain a case history of each case, known as a register of actions, in the court's automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and displaying the case number, date of filing, names of the parties, and names of any attorneys of record. The register of actions-case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan Trial Court Case File Management Standards. ~~When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:~~

- (i) ~~the offense (if one);~~
- (ii) ~~the judge assigned to the case;~~

- (iii) the fees paid;
- (iv) the date and title of each filed item;
- (v) the date process was issued and returned, as well as the date of service;
- (vi) the date of each event and type and result of action;
- (vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;
- (viii) the orders, judgments, and verdicts;
- (ix) the judge at adjudication and disposition;
- (x) the date of adjudication and disposition; and
- (xi) the manner of adjudication and disposition.

Each ~~notation~~entry shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each ~~notation~~entry shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

- (~~db~~) Case File. The clerk of the court shall maintain a ~~paper and/or electronic file for~~of each action, bearing the case number assigned to it, ~~in which the clerk shall keep for~~ all pleadings, process, written opinions and findings, orders, and judgments filed in the action, and any. ~~Additionally, the clerk shall keep in the file all other materials prescribed by court rule, statute, or as court ordered by the court to be filed with the clerk of the court. If other case file records of a case file are maintained separately from the case files, the clerk shall keep maintain them as prescribed by trial court case file management standards.~~

- (2) Calendars. The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity.
- (3) Abolished Records.
 - (a) Journals. Except for recording marriages, journals shall not be maintained.
 - (b) Dockets. A register of actions replaces a docket. Wherever these rules or applicable statutes require entries on a docket, those entries shall be entered in the court's automated case management system ~~on the register of actions.~~
- (E) Other Case Records. The clerk or other persons designated by the chief judge of the court shall ~~keep~~maintain in the manner prescribed by these rules, other materials filed with or handled by the court for purposes of case processing, including but not limited to wills filed for safekeeping, case evaluations, exhibit logs, presentence reports, probation files, problem-solving court treatment files, financial statements for collections, and friend of the court records.
- (F)-(G)[Unchanged.]
- (H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk may not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information ~~in a register of actions~~ through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039; however, all other public information in its case ~~records~~files may be provided through electronic means only upon request. The court may provide access to any case record that is not ~~a document~~available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(C)(2), in a medium ~~in~~for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.
 - (1) Unless access to a case record or information contained in a record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain

copies as provided in subrule (J). In accordance with subrule (J), the court may collect a fee for the cost of this service, including the cost of providing the new record in a particular medium.

- (2) Every court shall adopt an administrative order pursuant to MCR 8.112(B) to
 - (a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;
 - (b) establish a policy for whether to provide access for records defined in subrule (F) and if access is to be provided, outline the procedure for accessing those records;
 - (c) specify the reasonable cost of reproduction of records provided under subrule (J); and
 - (d) specify the process for determining costs under subrule (J).

(I) Sealed Records.

(1)-(3)[Unchanged.]

- (4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with or maintained by the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a record in whole or in part shall be held under seal pending the court's disposition of the motion.

(5)-(7)[Unchanged.]

(J) [Unchanged.]

- (K) Retention Periods and Disposal of Court Records. For purposes of retention, the records of the trial courts include: (1) administrative and fiscal records, (2) case file and other case records, (3) court recordings, log notes, jury seating charts, and recording media, and (4) nonrecord material. The records of the trial courts shall be retained in the medium prescribed by MCR 1.109. The records of a trial court may not be ~~destroyed~~ disposed of except as authorized by the records retention and disposal schedule and upon order by the chief judge of that court. Before ~~destroying~~ disposing of records subject to the order, the court shall first transfer to

the Archives of Michigan any records specified as such by ~~State Archives~~ in the Michigan trial courts approved records retention and disposal schedule. An order ~~of destruction~~ disposing of court records shall comply with the retention periods established by the State Court Administrative Office and approved by the state court administrator, Attorney General, State Administrative Board, ~~and Archives of Michigan,~~ and Records Management Services of the Department of Management and Budget, in accordance with MCL 399.5.

(L) [Unchanged.]

Rule 8.302 ~~Documents and Files~~ Records and Entries Kept by Clerk

~~Original orders and letters of authority, after being recorded, must be placed in the files of the court. For security purposes, testamentary documents of deceased persons, bonds, orders, and such other documents as the court directs must be copied by microfilming or other means promptly after filing or issuance and preserved in the records of the court separately from the files. In addition, t~~The clerk of every probate court shall maintain court records and make reports as prescribed by MCR 8.119. In addition, any unsealed testamentary document filed with the probate court must be safeguarded by reproducing the document in a format authorized by the Records Reproduction Act (MCL 24.401 et seq.) and storing it with the files of the court or offsite. The original of any unsealed testamentary document must remain with the probate court in fireproof storage. Sealed testamentary documents filed with the probate court for safekeeping under MCL 700.2515 must also be safeguarded in fireproof storage.

Staff comment: The proposed amendments of MCR 3.925, 8.119, and 8.302 and proposed new MCR 5.133 are an expected progression in the development of policies and procedures arising from a larger project that was initiated, in part, through the Access to Records Committee in 2009. These policies and procedures are intended to standardize management of court records and to provide a uniform basis for developing parameters on the use of technology in creating, accessing, routing, maintaining, and disposing of court records. These particular amendments will assist in implementing the goals of 2013 PA 199 and 201 and improving the policies and procedures adopted by the Court in 2012 under Administrative File No. 2006-47.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by May 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or

ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-06. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2016

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk